

NEXUS BANKRUPTCY
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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re:

KRISTINA LYNN SMITH,

Debtor.

Case No: 8:24-bk-12527-SC

Chapter 7

MOVANT'S HEARING BRIEF

Hearing:

Date: July 14, 2025

Time: 9:30 AM

Courtroom: 5C

Movant, Jeffrey Gomez, hereby submits this Hearing Brief, and the concurrently lodged and served Witness List and Exhibit Binder, in support of his objections to both Claim No. 5-1 (Howard Smith) and Claim No. 6-1 (Kerry Kavanaugh). This brief addresses the objections to both claims, as they involve nearly identical facts and legal issues. Furthermore, the Debtor filed both claims on behalf of the respective family-member Claimants.

I. BACKGROUND

The Debtor and Movant have been involved in divorce proceedings since 2016. The Debtor, allegedly acting on behalf of her father and sister, filed Claim 5-1 (Howard Smith) in the amount of \$689,000, and Claim 6-1 (Kerry Kavanaugh) for \$33,000. (**Movant's Exhibits 1 and 2**). Both claims are for alleged loans to cover the Debtor's legal fees and living expenses and are supported by "Standard Promissory Notes" allegedly executed on May 24, 2017.

1 Movant retained Michael Kunkel, a computer forensics expert, to analyze the authenticity
2 of the promissory notes. (**Movant's Exhibit 3**). Mr. Kunkel's investigation revealed that the
3 promissory notes were created using a template from the website "Templates.Legal," as indicated
4 at the bottom of each page of the notes. A search of the public domain registry Whois.com
5 confirms that the domain Templates.Legal was not created until December 30, 2019, more than
6 two and a half years *after* the notes were supposedly signed. (**Movant's Exhibit 4**). Further, a
7 search of the Internet Archive (Archive.org) confirms that the website did not exist prior to late
8 2019. (**Movant's Exhibit 5**). This discrepancy makes it impossible for the notes to have been
9 created on the date specified.

10 When confronted with irrefutable evidence in the claim objections showing that the
11 promissory notes were fabricated, the Debtor admitted that the documents submitted to the Court
12 were not the originals. Instead, she claimed they were backdated "reproductions" of allegedly
13 lost documents. Aside from the fact that the Debtor is clearly trying to cover up one lie with
14 another lie, this is an admission that she knowingly created and filed fabricated documents and
15 concealed the falsity from the Court. If the "reproduction" was truly an innocent act, she should
16 have been upfront about it, as that is exactly what is required by Federal Rule of Bankruptcy
17 Procedure 3001(c)(1) which provides that "If the writing has been lost or destroyed, a statement
18 explaining the loss or destruction **must be filed with the claim.**" See FRBP 3001(c)(1).

19 The Debtor's fabrication of these claims serves a dual, improper purpose. First, these
20 claims were manufactured as part of a scheme to deceive the Chapter 7 Trustee. By listing these
21 debts and dozens of other unsubstantiated debts in her schedules for a total of 41 creditors, the
22 Debtor created the illusion of a high-debt case. (**Movant's Exhibit 8**). The clear intent was to
23 mislead the Trustee into believing this was a surplus estate with a large creditor pool, thereby
24 justifying the time and expense of investigating the Debtor's baseless assertions of ownership of
25 Movant's separate property. The reality, as shown by the official claims register, is that only a
26 small handful of legitimate claims have actually been filed. (**Movant's Exhibit 7**). Second, the
27 claims are a transparent attempt to divert potential estate funds away from legitimate creditors
28 and Mr. Gomez, the primary surplus beneficiary, and into the pockets of her own family. If the

Trustee liquidates any property, especially the properties in which the Debtor falsely claims an interest, these large, fraudulent claims would absorb any proceeds and ensure that Mr. Gomez receives significantly less than his rightful share.

II. LEGAL ARGUMENT

A.

The Claims Must Be Disallowed as They Are Based on Fabricated Documents

Under 11 U.S.C. § 502(b)(1), a claim must be disallowed if it is "unenforceable against the debtor and property of the debtor, under any agreement or applicable law." A claim based on a document that is not authentic is unenforceable. A bankruptcy court has the authority and duty to "inquire into the validity of any claim... and may disallow it if it is found to be without lawful existence." *Margolis v. Nazareth Fair Grounds & Farmers Market, Inc.*, 249 F.2d 221, 223-24 (2d Cir. 1957).

The expert declaration of Michael Kunkel proves that the promissory notes submitted in support of the Claims were created using a website that did not exist when the notes were allegedly executed. However, the testimony of Michael Kunkel, or any other expert, is not necessary to see the falsity of the documents since the Debtor and Claimants admitted that they are not authentic.

B.

The Claims are Unenforceable Because They Are Barred by the Statute of Limitations

Even if the Court were to set aside the evidence of fabrication and fraud on the Court, the Claims are unenforceable as a matter of law. The applicable statute of limitations for an action on a written contract in California is four years. Cal. Code Civ. Proc. § 337. A claim that is time-barred under state law is unenforceable in bankruptcy and must be disallowed under § 502(b)(1). *See In re Chaussee*, 399 B.R. 225 (B.A.P. 9th Cir. 2008).

1 The promissory notes are dated May 24, 2017. The Claimants have presented no
2 evidence of tolling the statute of limitations. Therefore, any cause of action on these notes
3 expired, at the latest, on May 24, 2021, and the Claims are time-barred and must be disallowed.
4

5 **C.**

6 **The Claims are Unenforceable for Lack of Valid Consideration**

7 The Claimants, in their oppositions, concede the documents are not originals but
8 "recreations" of allegedly lost notes. This admission, made only after the objection was filed, is
9 significant for another reason: lack of consideration. Under California law, a contract requires a
10 bargained-for exchange. A promise based on a past benefit or obligation is unenforceable. *See*
11 *Kurokawa v. Blum*, 199 Cal. App. 3d 976, 989 (1988).

12 If, as the Claimants now suggest, the promissory notes were created in 2021 or later to
13 memorialize alleged loans from 2017, they are invalid. The promise to repay (the notes) was
14 made years after the alleged consideration (the loans) was provided. Without a new,
15 contemporaneous exchange of value, the notes are unenforceable contracts and cannot form the
16 basis for an allowed claim.
17

18 **D.**

19 **Movant Has Not Conceded That the Claims Are Valid**

20 Movant has always maintained that at least some portion the funds in question originated
21 from community property assets that the Debtor took when she departed the family residence in
22 2016, including approximately \$75,000 in cash and \$50,000 in silver. The supposed \$33,000
23 "cash loan" from Kerry Kavanaugh was not a loan at all, but rather stolen or misappropriated
24 community funds that were never disclosed.

25 While Movant may have previously believed some form of loan existed between the
26 Debtor and her family, a recent title search of the Debtor's father's residence revealed the true
27 nature of their financial arrangements. The only actual loan between the parties occurred in 2020
28 and has already been fully satisfied. On October 19, 2020, Howard Smith obtained a recorded

1 \$600,000 loan from Scott and Kerry Kavanaugh, secured by his residence. This debt was
2 extinguished on February 8, 2024, when Mr. Smith deeded his \$1.3 million property to the
3 Kavanaughs. The Debtor confirmed this transaction also served as an early inheritance, stating in
4 a 2024 settlement conference that she did not have to pay her father back and I believe that the
5 loan was satisfied and her sister received her inheritance.

6 Ultimately, whether or not Movant subjectively believed a debt existed at some previous
7 time has no bearing on the legal validity of the Claims.

8
9 **E.**

10 **The Filing and Prosecution of These Claims Constitute Criminal Acts**

11 The Proof of Claim form (Official Form 410) contains an unambiguous warning: "**A**
12 **person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5**
13 **years, or both. 18 U.S.C. §§ 152, 157, and 3571."**

14 By knowingly presenting a claim supported by fabricated documents, the Debtor and the
15 Claimants have committed criminal acts. The evidence shows a clear, willful intent to deceive
16 the Court and the Trustee, and to harm Movant and legitimate creditors. They submitted
17 documents they knew to be false, concealed that falsity until confronted with irrefutable
18 evidence, and did so for the improper purpose of siphoning money from the estate and
19 misleading the Trustee. This conduct falls squarely within the prohibitions of 18 U.S.C. § 152
20 (Concealment of assets; false oaths and claims) and § 157 (Bankruptcy fraud). The disallowance
21 of these claims is not only appropriate under § 502 but is also necessary to address this blatant
22 contempt for the law and the integrity of the Court.

23
24 **III. CONCLUSION**

25 The claims filed by Howard Smith and Kerry Kavanaugh lack any credible support and
26 are instead based on admittedly fabricated and backdated documents. They are barred by the
27 statute of limitations and fail for lack of consideration. This scheme, orchestrated by the Debtor,
28 is an abuse of judicial process, a fraud on this Court, and a federal crime.

1 For the foregoing reasons, Objector Jeffrey Gomez respectfully requests that this Court
2 enter an order disallowing Proofs of Claims 5-1 and 6-1 in their entirety and grant such other
3 relief as it deems just and proper.

4
5 NEXUS BANKRUPTCY

6 Date: June 30, 2025

/s/Benjamin Heston

7 BENJAMIN HESTON,
8 Attorney for Movant
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

**3090 Bristol Street #400
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A true and correct copy of the foregoing document entitled (*specify*): **MOVANT'S TRIAL BRIEF** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 6/30/2025, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL

Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed (state method for each person or entity served):

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

6/30/2025
Date

Benjamin Heston
Printed Name

/s/Benjamin Heston
Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

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